

<b>In re application of Brian Hong</b>	)	<b>Date: January 24, 2008</b>
	)	
<b>Serial No.: 10/675,746</b>	)	<b>Group Art Unit: 2621</b>
	)	
<b>Filed: 09/30/2003</b>	)	<b>Examiner: Wong, Allen</b>
	)	
<b>For: Peripheral Viewing System for</b>	)	
<b>a Vehicle</b>	)	
_____	)	

Hon. Commissioner of Patents and Trademarks  
P.O. Box 1450  
Alexandria, Virginia 22313

Mail Stop: Appeal Briefs-Patents

## **APPEAL BRIEF**

### **I.**

#### **Real Party In Interest**

The real parties in interest are Brian KwangShik Hong and Ran Soo Hong.

### **II.**

#### **Related Appeals and Interferences**

None.

### **III.**

#### **Status of Claims**

Claims 1-5 have been canceled; pending claims 6-13 were finally rejected and are being appealed herein.

#### **IV.**

##### **Status of Amendments**

None.

#### **V.**

##### **Summary of the Claimed Invention**

The present invention as claimed in independent claim 6 includes a peripheral viewing system for a vehicle wherein said vehicle includes two opposing sides (on which side view mirrors 6 are mounted, P. 6, lines 4-8, Figure 1), a steering wheel positioned within a passenger compartment (See Figure 5; P.6, lines 16-18) and a rear (see Figure 6), the viewing system comprising a pair of cameras 1, one of said cameras mounted on one of said sides of the vehicle, another of said cameras mounted on another of said sides of the vehicle (P.6, lines 5-8); a pair of video displays 5,7 mounted within said passenger compartment, and positioned therein to be readily visible by a driver, each video display in selective communication with a designated one of said cameras (P.6, lines 13-19; P.7, lines 1-4); a microprocessor means (i.e., a computer 10) in communication with each of said cameras and said displays for continuously processing images received from each of said cameras and for continuously transmitting said images to each of said displays. (P. 6, lines 13-16). Claim 7 further includes a third camera 3 mounted on

the rear of said vehicle, said third camera connected to said microprocessor means (P.6, lines 9-14); a third video display 9 mounted within the vehicle passenger compartment, said third video display in selective communication with said third camera via said microprocessor means for continuously depicting images behind said vehicle. (P. 7, lines 1-4).

Claim 8, which depends from claim 7, adds a warning means for alerting a driver of an approaching vehicle. [the warning means is a phototransistor 2 mounted on each side of said vehicle, adjacent the rear thereof, each of said phototransistors electrically connected to said microprocessor means 10; an audible alarm means 10, 4 electrically connected to said microprocessor means for audibly alerting a driver if said phototransistors detect a trailing vehicle within a predetermined range of said vehicle. (P.7, lines 8-14)]. Claim 9 specifically defines the warning means as a phototransistor 2 mounted on each side of said vehicle, adjacent the rear thereof, each of said phototransistors electrically connected to said microprocessor means 10; an audible alarm means 10,4 electrically connected to said microprocessor means for audibly alerting a driver if said phototransistors detect a trailing vehicle within a predetermined range of said vehicle (P.7, lines 8-14).

Claim 10 depends from claim 9 and further provides that the vehicle

includes a turn signal switch means electrically connected to said microprocessor means for exclusively activating said audible alarm means if said trailing vehicle is within the predetermined range of said vehicle. (P. 7, lines 15-19).

Claim 11 defines each of the cameras as being encased within a contoured, aerodynamic housing 33 to minimize wind drag. (P.6, lines 8-9). Claim 12 provides that one of said displays is positioned immediately adjacent a first side of the steering wheel and another of said displays is positioned immediately adjacent an opposing side of the steering wheel. (P.6, lines 16-19). Claim 13, which depends from claim 12, defines the third camera 3 as being immediately adjacent a top edge of a rear window on the vehicle for replacing a conventional rear view mirror 41. (P.6, lines 9-11).

## **VI.**

### **Grounds of Rejection to be Reviewed on Appeal**

Whether claims 6 and 7 are patentable under 35 U.S.C. 103(a) over U.S. patent no. 5,680,123 issued to Lee in view of U.S. patent no. 5,956,094 issued to Chun, and whether claims 8-13 are patentable under 35 U.S.C. 103(a) over U.S. patent no. 5,680,123 issued to Lee in view of U.S. patent no. 5,956,094 issued to Chun in further view of U.S. patent no. 5,530,420 issued to Tsuchiya.

## VII.

### Argument

#### **A. CLAIMS 6 AND 7 ARE PATENTABLE UNDER 35 U.S.C. 103(A) OVER U.S. PATENT NO. 5,680,123 ISSUED TO LEE IN VIEW OF U.S. PATENT NO. 5,956,094 ISSUED TO CHUN**

In the detailed final action, the examiner initially rejected claims 6 and 7 as being unpatentable under 35 U.S.C. 103(a) over U.S. patent no. 5,680,123 issued to Lee in view of U.S. patent no. 5,956,094 issued to Chun. For the following reasons, the pending claims are clearly patentable in light of the cited references.

To establish a prima facie case of obviousness, the examiner must establish, inter alia, that the references *teach or suggest* all claim limitations. M.P.E.P. § 2143.03. (Emphasis added). In applying 35 U.S.C. 103, the following factors should be considered:

1. The claimed invention must be considered as a whole;
2. The references must be considered as a whole and must suggest the *desirability* and thus the obviousness of making the combination;
3. The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention, and;
4. Reasonable expectation of success is the standard with which obviousness

is determined. M.P.E.P. § 2141, citing *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 (Fed. Cir. 1986).

A statement that modifications of the prior art were well within the ordinary skill of the art because the references cited teach that all of the features are individually known does not establish a prima facie case of obviousness *without some objective reason to combine the teachings of the references*. (Emphasis added). M.P.E.P. § 2143.01, citing *Ex Parte Levengood*, 28 U.S.P.Q. 2d 1300 (B.P.A.I. 1993). The fact that the prior art could be modified in a manner suggested by the examiner did not make modification obvious unless prior art suggested the desirability of the modification. *In re Fritch*, 972 F.2d 1260 (Fed. Cir. 1992).

The differences between the device of Lee and the claimed invention were noted in the original specification. (See p.2, lines 7-14). In order to display the output of a side video camera, a user must activate a turn signal. However, only the side camera corresponding to the direction of the activated turn signal is displayed. Otherwise, the driver can only view the output of the rear camera. Additionally, the system employs a single video display limiting the driver to a single view at any given time. Finally, the system includes no warning system for alerting the driver of an approaching vehicle in the event the approaching vehicle is

outside the viewing range of the cameras.

In rejecting claims 6 and 7 (claim 7 merely adds the third rearview camera and associated video display) in the detailed action, the examiner states that Lee discloses all of the features but for a pair of video displays mounted within the vehicle passenger compartment....each of the cameras in discrete communication with a designated display. Claim 6, however, contains an additional limitation that each of the cameras in combination with the microprocessor **continuously** transmits images to each **corresponding** display unit. The continuous display of the peripheral images is not possible with the device of Lee. Regarding such noted difference in the last amendment and accompanying remarks, the examiner states, “[r]egarding lines 12-13 on page 5 of applicant’s remarks, applicant states that Lee does not disclose the microprocessor continuously transmitting images to each corresponding display unit. In Figure 5, Lee discloses that element 60 and 68 function to process the images obtained by the cameras 62, 64 and 66, in that the images can be continuously processed as needed by the user for displaying images to element 74.” Figure 5 is merely a block diagram of the system and contains absolutely no suggestion of each of a plurality of cameras continuously transmitting images to a corresponding display as claimed. The examiner’s inference of the drawing is merely revisionist hindsight.

The examiner further notes that Lee and Chun discuss the use of split screens or picture-in-picture screens for displaying outputs from multiple cameras. Such disclosures actually teach away from the claimed invention in that the references seek to eliminate multiple display screens for various reasons as stated in the disclosures. A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). However, "the prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed...." *In re Fulton*, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004).M.P.E.P. §2141.02. The references cited clearly criticize and discredit the use of multiple displays each associated with a designated camera. For example, the patent to Chun provides that the object of the invention is to divisionally display "monitored areas photographed by a plurality of monitoring cameras on *a single screen...*" (Emphasis added), Column 1, lines 17-20. The document further describes the disadvantages associated with displaying the output of each of a plurality of multiple cameras on a designated monitor. Column 1, lines 23-26.



In response to such arguments, the examiner states that “there is nothing novel about using multiple displays for displaying multiple images in a motor vehicle unless the applicant actually believes that using multiple displays is a patentable feature.” The multiple display and camera assembly of the present invention is not only a patentable feature, but is critical to its function as a viewing system for a vehicle driver. When operating a motor vehicle, a driver must continuously monitor both sides of the vehicle and the rear. The device of Lee does not allow for such continuous monitoring; furthermore, the multiple displays of the claimed invention are designed to replace conventional rear and side view mirrors. The use of split screens, or picture-in-picture screens for monitoring the periphery of a moving vehicle would be distracting, confusing and impractical. The design of the present invention allows the rear of the vehicle to be monitored as if conventional rearview mirrors were being used. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). The prior art is devoid of any suggestion or teaching of using multiple cameras each having a designated display in combination with a vehicle as claimed. “It is perfectly well settled that a new combination of elements, old in themselves, but which produce a new and useful

result, entitles the inventor to the protection of a patent.” *Expanded Metal v. Bradford*, 214 U.S. 366 (1909).

The initial burden is on the examiner to provide some suggestion of the desirability of making a claimed combination. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. & Inter. 1985). The examiner has not presented a convincing line of reasoning as to why the applicant could readily combine a premises monitor that seeks to eliminate multiple displays with a vehicle monitor whereby only a single view can be seen at one time and where only side views are obtainable by a triggering mechanism, to form the claimed monitoring system. The examiner merely concludes that because some of the claimed elements exist separately, their combination is obvious, even where the references seek to eliminate multiple displays as claimed. The only motivation or suggestion offered by the examiner is that **some** of the claimed subject matter separately exists elsewhere.

Both the Federal Circuit and many lower courts have frequently warned

against the use of such hindsight in determining obviousness. An “invention must be viewed not with the blueprint drawn by the inventor, but in the state of the art that existed at the time.” *Interconnect Planning Corp. V. Feil*, 774 F. 2d. 1132, 1138 (Fed. Cir. 1985).

“It is impermissible to use the claimed invention as an instruction manual or ‘template’ to piece together the teachings of the prior art so that the claimed invention is rendered obvious....This court has previously stated that ‘one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.’” *In re Fritch*, 972 F. 2d 1260 (Fed. Cir. 1992).

“Decomposing an invention into its constituent elements, finding each element in the prior art, and then claiming that it is easy to reassemble these elements into the invention, is a forbidden *ex post* analysis.” *In Re Mahurkar Patent Litigation*, 831 F. Supp. 1354 (N.D. Ill. 1993), *affirmed*, 71 F. 3d 1573 (Fed. Cir. 1995).

In *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, (Fed.Cir.1985), the court provided that:

“35 U.S.C. § 103 requires that obviousness be determined with respect to the invention as a whole. This is essential for combination inventions, for

generally all combinations are of known elements. When prior art references require selective combination by the court to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gleaned from the invention itself. There must be ‘something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination.’”

“Critical to the analysis is an understanding of the particular results achieved by the new combination. The claims here at issue are directed to a combination of known components of telephone systems in an admittedly new way to achieve a new total system. Neither the district court in its opinion, nor the defendants, identified any suggestion in the prior art that the components be combined as they were by Feil or that such combination could achieve the advantages of the Feil system.”

Neither of the cited patents suggests multiple cameras and associated displays secured to a vehicle allowing a driver to **continuously and simultaneously** monitor both sides and the rear of a vehicle. The examiner has merely broken down the claimed invention into its individual components, and purportedly located each element in a reference. And, the examiner concludes that, because the elements exist, reassembling them to form the claimed monitoring

system is obvious. Such hindsight reconstruction is clearly improper and is forbidden by the mandates set forth by the Federal Circuit.

Not only do the above patents fail to disclose or suggest the claimed invention, the patent to Chun is within a non-analogous art. For example, in *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992), the applicant claimed an improvement in a hose clamp which differed from the prior art in the presence of a preassembly "hook" which maintained the preassembly condition of the clamp and disengaged automatically when the clamp was tightened. The Board relied upon a reference which disclosed a hook and eye fastener for use in garments, reasoning that all hooking problems are analogous. The court held the reference was not within the field of applicant's endeavor, and was not reasonably pertinent to the particular problem with which the inventor was concerned because it had not been shown that a person of ordinary skill, seeking to solve a problem of fastening a hose clamp, would reasonably be expected or motivated to look to fasteners for garments. MPEP §2141.01(a). Likewise, an inventor looking to create a peripheral viewing system for a vehicle that replaces or supplements the rear and side view mirrors would not be expected or motivated to look to a closed-circuit-TV premises monitor. The motivation is even further diminished by the fact that Chun actually seeks to eliminate multiple video displays. The teaching or

suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). The prior art is devoid of any suggestion or teaching of multiple video cameras each in communication with a discrete display allowing continuous monitoring of a vehicle periphery.

A reference is analogous if 1) it is within the field of the inventor's endeavor or, if not, 2) it is reasonably pertinent to the particular problem with which the inventor was involved. *In re Deminski*, 796 F. 2d 436 (Fed. Cir. 1986). In applying the aforementioned two-part test, the Federal Circuit addressed a similar obviousness rejection as the one at issue herein. In *In Re Clay*, 966 F. 2d 656 (Fed. Cir. 1992), the PTO had rejected a claimed process for storing a liquid hydrocarbon product in a storage tank having a dead volume between the tank bottom and its outlet port. The process included preparing a solution that gels when placed in the dead space, and later adding a gel degradation agent when the gel is to be removed. The PTO rejected the claims as being obvious in light of a reference disclosing an apparatus for displacing dead space liquid using bladders, in view of a second reference which disclosed a process for reducing the permeability of hydrocarbon bearing formations using a gel similar to that of the

applicant's invention. The Board considered the gel reference to be pertinent because the gel would have a number of applications including its combination with the bladders to store in a tank dead space.

The Federal Circuit reversed. First, the court determined that the cited gel reference was not within the inventor's field of endeavor. "The reference cannot be considered to be within [the inventor's] field of endeavor merely because both relate to the petroleum industry... [The inventor's] field of endeavor is the storage of refined liquid hydrocarbons. The field of endeavor of [the reference] invention, on the other hand, is the extraction of crude petroleum." *Id.* At 659.

Next, the court determined that the cited reference is not reasonably pertinent to the inventor's problem.

"A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem. Thus, the purposes of both the invention and the prior art are important in determining whether the reference is reasonably pertinent to the problem the invention attempts to solve. If a reference disclosure has the same purpose as the claimed invention, the reference relates to the same problem, and that fact supports

use of that reference in an obviousness rejection. An inventor may well have been motivated to consider the reference when making his invention. If it is directed to a different purpose, the inventor would accordingly have had less motivation or occasion to consider it.”

The court then concluded that, because the reference was concerned with plugging formation anomalies and recovering oil from rock, it was not reasonably pertinent to applicant’s problem of preventing loss of stored product to dead tank volume. “A person having ordinary skill in the art would not reasonably have expected to solve the problem of dead volume in tanks for storing refined petroleum by considering a reference dealing with plugging underground formation anomalies.” *Id.* At 659-660.

Likewise, in this matter, applicant’s field of endeavor is vehicle monitoring, or more specifically providing a system that is far superior to the conventional side and rear view mirrors. Chun’s field of endeavor is a premises monitor that allows multiple areas surrounding the premises to be monitored on a *single* screen. It in no way whatsoever involves vehicles, driving, traffic safety, or any matter relating thereto. Accordingly, the cited Chun reference is not within the applicant’s field of endeavor.

Furthermore, the Chun reference is not reasonably pertinent to the problem



that applicant's invention is purporting to solve. The monitoring system according to the present invention overcomes certain deficiencies associated with the use of rear and side view mirrors, i.e., blind spots. The patent to Chun is concerned with displaying multiple outputs from a plurality of cameras on a single display. See column 1, lines 16-21. It does not remotely deal with applicant's problem of eliminating blind spots associated with rear and side view mirrors. As in *In Re Clay*, the "purpose" of Chun is completely different than the "purpose" of the claimed invention.

**B. CLAIMS 8-13 ARE PATENTABLE UNDER 35 U.S.C. 103(A) OVER U.S. PATENT NO. 5, 680, 123 ISSUED TO LEE IN VIEW OF U.S. PATENT NO. 5,956,094 ISSUED TO CHUN IN FURTHER VIEW OF U.S. PATENT NO. 5,530,420 ISSUED TO TSUCHIYA**

Claims 8-13 were rejected based upon the aforementioned references in combination with the patent to Tsuchiya. Pertaining to claim 8, the examiner states that Lee discloses the use of an alarm and Tsuchiya discloses "a vehicle detection means for alerting a driver of an approaching vehicle(fig. 1, element 100 is a vehicle detection means that utilizes the image information from cameras 11a and 11b, speed sensor 4, and other photoelectric sensors for detecting the approaching vehicle..." The applicant did not claim "the use of an alarm" and a vehicle

detection means, but instead a **warning** means for **alerting** a driver of an approaching vehicle. The alarm of Lee is in fact the conventional vehicle security system that is in communication with the video monitor for recording images for a predetermined time period if the alarm is tripped. The alarm in no way relates to warning a driver of an approaching vehicle. The device of Tsuchiya includes a construction detection means for calculating positions of nearby objects using triangulation. The calculated distance is depicted on a display. The device in no way discloses or suggests a warning system for alerting a driver of an approaching vehicle, particularly in combination with the claimed peripheral viewing system as set forth in the intervening claims. The examiner cites the speed sensor 4 of Tsuchiya et al. though the claimed invention includes no such feature. The examiner also avers that the reference includes a photosensor but the disclosure mentions no such feature. Furthermore, applicant did not claim a “speed sensor 4, and other photoelectric sensors for detecting the approaching vehicle; conversely, the applicant claimed a *phototransistor mounted on each side of said vehicle, adjacent the rear thereof, each of said phototransistors electrically connected to said microprocessor means; an audible alarm means electrically connected to said microprocessor means for audibly alerting a driver if said phototransistors detect a trailing vehicle within a predetermined range of said vehicle* (claim 9). Such

feature is neither disclosed nor remotely suggested by any of the cited references. The examiner merely concludes that Tsuchiya discloses a photosensor(it does not) and, therefore, its combination with any other elements to achieve any other purpose is obvious, which is clearly impermissible according to the above-cited jurisprudence.

Claim 10 further includes *a turn signal switch means electrically connected to said microprocessor means for exclusively activating said audible alarm means if said trailing vehicle is within the predetermined range of said vehicle.* In rejecting the claim, the examiner repeats the above quoted language regarding Tsuchiya and that Lee discloses a turn signal control switch. The examiner states:

“Regarding claim 10, Lee discloses the turn signal control switch (fig.3, element 42). Lee and Chun do not specifically disclose wherein said vehicle includes a turn signal switch means electrically connected to said microprocessor means for exclusively activating said audible alarm means if said trailing vehicle is within the predetermined range of said vehicle. However, Tsuchiya teaches the use of a vehicle detection means for alerting a driver of an approaching vehicle (fig.1, element 100 is an vehicle detection means that utilizes the image information from cameras 11a and 11b, speed sensor 4, and other

photoelectric sensors for detecting the approaching vehicle, wherein sensors are utilized for determining if the approaching vehicle is at a safe distance or range). Since Tsuchiya provides the warning means, it would have been obvious to one of ordinary skill in the art to apply audible alarm means for performing the task of alarming or providing a sound warning the driver of approaching vehicles so as to avoid potentially colliding with the approaching vehicles and preventing accidents. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Lee, Chun and Tsuchiya, as a whole, for providing the driver pertinent information about approaching vehicles so as to drive at a safe distance and to prevent the occurrence of accidents (Tsuchiya col. 1 , In.47-54).”

Again, the examiner has provided no explanation whatsoever as to how the references suggest the claimed combination of elements; the examiner vaguely refers to some elements within the references and merely catalogues the elements by simply averring that they exist elsewhere. Such revisionist analysis is particularly improper considering that many of the claimed features are not contained within either reference.

Claims 11-13 delineate that each of said cameras is encased within a

contoured, aerodynamic housing to minimize wind drag, that one of said displays is positioned immediately adjacent a first side of the steering wheel and another of said displays is positioned immediately adjacent an opposing side of the steering wheel, and that said third camera is immediately adjacent a top edge of a rear window on the vehicle for replacing a conventional rear view mirror.

“In rejecting the claims, the examiner provides the following comments:

Regarding claim 11, it would have been obvious to one of ordinary skill in the art to encase cameras in any form as needed or suited by design choice since encasing cameras into aerodynamic, protective cases is a well known practice for shielding cameras and providing sensible forms of concealing cameras so as to not slow down the speed of the vehicle.

Regarding claim 12, it would have been obvious to one of ordinary skill in the art to place the displays in any location as seen fit by the user or creator for conveniently viewing the displayed information so as to drive carefully with all of the necessary, precise video information of the perspectives obtained by the cameras in order to prevent accidents.

Regarding 13, Lee discloses a third camera placed in the rear of the vehicle (fig.1A-B, element 14 is the third camera). It would have been obvious to one of ordinary skill in the art to position Lee's camera immediately adjacent

a top edge or bottom edge of a rear window on the vehicle so as to simulate a rear view of the scene in order to ascertain a clear perspective of the vehicle's rear while driving for avoiding other vehicles and preventing accidents.”

The examiner for the first time essentially took official notice that such features were obvious when a reference in support of such assertion should have been cited. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)). It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the

pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21. See also *In re Grose*, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979). It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697. See MPEP §2144.03.

The examiner has failed to show how the claimed features enumerated above are recognized equivalents in the field of vehicle monitoring systems. For example, claim 12 pertaining to the positioning of the displays is not merely an arbitrary choice obvious to one skilled in the art, but is instead creative design so that the displays replace and emulate side view mirrors. Furthermore, contrary to the holding of *Zurko*, the examiner has relied solely on common knowledge as the principal (and only) evidence in rejecting claims 11-13. Accordingly, pursuant to M.P.E.P. §2144.03, applicant hereby demands that the examiner provide documentary evidence in support of his assertion of Official Notice.

### **C. CONCLUSION**

In conclusion, none of the references cited herein disclose a vehicle monitoring system that overcomes the disadvantages associated with conventional rear view mirrors according to the claimed invention. In rejecting the claims, the examiner has applied references within a non-analogous art, and has improperly

applied such references by ignoring the claimed interrelation of parts where the claimed interrelation is not disclosed, even by the non-analogous references. The examiner has also repeatedly asserted that claimed combinations are obvious because **some** components of the claimed invention previously existed, without showing any rationale or reasoning as to why combining the existing components is obvious. As such, the examiner's reasoning is clearly employing the use of impermissible hindsight construction. Furthermore, the examiner failed to address numerous claim limitations which are clearly undisclosed by the cited references by simply asserting official notice without citing any documentary evidence in support of such assertion.



## **VIII.**

### **Claims Appendix**

Claim 6. A peripheral viewing system for a vehicle wherein said vehicle includes two opposing sides, a steering wheel positioned within a passenger compartment and a rear, the viewing system comprising:

a pair of cameras, one of said cameras mounted on one of said sides of the vehicle, another of said cameras mounted on another of said sides of the vehicle;

a pair of video displays mounted within said passenger compartment, and positioned therein to be readily visible by a driver, each video display in selective communication with a designated one of said cameras;

a microprocessor means in communication with each of said cameras and said displays for continuously processing images received from each of said cameras and for continuously transmitting said images to each of said displays.

Claim 7. The peripheral viewing system according to claim 6 further comprising:

a third camera mounted on the rear of said vehicle, said third camera connected to said microprocessor means;

a third video display mounted within the vehicle passenger compartment, said third video display in selective communication with said third camera via said

microprocessor means for continuously depicting images behind said vehicle.

Claim 8. The peripheral viewing system according to claim 7 further comprising a warning means for alerting a driver of an approaching vehicle.

Claim 9. The peripheral viewing system according to claim 8 wherein said warning means comprises:

a phototransistor mounted on each side of said vehicle, adjacent the rear thereof, each of said phototransistors electrically connected to said microprocessor means;

an audible alarm means electrically connected to said microprocessor means for audibly alerting a driver if said phototransistors detect a trailing vehicle within a predetermined range of said vehicle.

Claim 10. The system according to claim 9 further wherein said vehicle includes a turn signal switch means electrically connected to said microprocessor means for exclusively activating said audible alarm means if said trailing vehicle is within the predetermined range of said vehicle.

Claim 11. The system according to claim 10 wherein each of said cameras is encased within a contoured, aerodynamic housing to minimize wind drag.

Claim 12. The system according to claim 11 wherein one of said displays is positioned immediately adjacent a first side of the steering wheel and another of

said displays is positioned immediately adjacent an opposing side of the steering wheel.

Claim 13. The system according to claim 12 wherein said third camera is immediately adjacent a top edge of a rear window on the vehicle for replacing a conventional rear view mirror.

**IX.**

**Evidence Appendix**

None.

**X.**

**Related Proceedings Appendix**

None.

Respectfully submitted,

**/kenneth l. tolar/**

Kenneth L. Tolar  
Registration No. 39,860  
Telephone No. (504) 780-9891